IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 197 OF 2004

LAWRENCE KAITAN D'SOUZA & ORS. .. PETITIONER

Vs.

MRS. ADDIEBAI FELIX D'SOUZA .. RESPONDENT

Mr. S. M. Kamble for petitioner

Mr. R. D. Suryawanshi for R

CORAM:-SMT. RANJANA DESAI, J.

DATED:-5/4/05

P.C.

In this civil revision application the original defendants have challenged order dated 20/10/04 whereby the defendants' application challenging the maintainability of the suit on the ground of valuation of the subject matter of the suit property was dismissed. The case of the defendants is that the suit land is converted for non-agricultural use and, therefore, the valuation of the said property ought to have been made as per its market

value. According to the defendants the plaintiff has deliberately undervalued the suit despite the fact that on the plaintiff's own showing the market value of the land exceeds Rs.8 lakhs.

2. The trial court has rejected the application holding that there are no documents on record which confirm that the suit land had been converted for N. A. use by granting permission required under Section 44 of the Land Revenue Code. It is also observed that in any case the suit is for relief of injunction in the form of restraining the defendant from disturbing the plaintiff's possession over the suit property and, therefore, the defendant's stand of improper valuation stands negatived.

3. The learned counsel for the petitioner drew my attention to the application filed by the defendants in which the defendants have adverted to the plaintiffs' reply dated 4/7/01 to the public notice issued by defendant 1 wherein the plaintiff has stated that the market value of the suit land is more than Rs.8 lakhs. The learned counsel, therefore, contended that since the plaintiff herself has valued the suit land at Rs.8 lakhs the trial court ought to have allowed the defendants' application. The suit is definitely undervalued.

4. The learned counsel further pointed out that in the plaint the plaintiff has prayed for a declaration that the defendant has no right, and/or authority to disturb the physical possession of the plaintiffs and, therefore, this is not

merely a suit for simplicitor injunction. The learned counsel also relied on a judgment of this court in **Jamunabai Parmananddas Shah & Ors. v. Bajirao Seetaram Kalbhor & Ors., 1995(1) Mh. L.J. 143** and contended that the character of the land is altered only from the date on which the land is put to N.A. Use. The learned counsel contended that the documents produced by the defendants show that the plaintiff has put the land to non-agricultural use. He, therefore, submitted that the impugned order deserves to be set aside.

5. I am unable to agree with the learned counsel for the petitioner. The possession of the suit land appears to be with the plaintiff. The suit is for an injunction against the defendants restraining them from disturbing the physical possession of the plaintiff. The declaration is only to the effect that the defendants have no right and/or authority to disturb the physical possession of the plaintiff. Therefore, this is a suit as the trial court has rightly observed for the relief of injunction . Besides the trial court has also observed that the documents on record do not confirm the fact that the suit land has been converted to N. A. use by granting the permission required under Section 44 of the Land Revenue Code. The certificate of Talathi of village Uttan states that the suit land has not been converted for non-agricultural use, but that temporary permission has been granted for such use. It prima facie appears that the plaintiff has carried out some

unauthorised construction on the suit land. But there is nothing to indicate that the suit land has been converted to non-agricultural use.

6. In **Jamunabai's case (supra)** this court has held that when permission for non-agricultural use is granted there is no alteration made in the assessment but it is only if and when the lands are in fact put to non-agricultural use and this fact is effectively communicated to the notice of the authorities that the assessment will change. It is further observed that the character of the land gets altered not when the order has been passed but from the date on which the lands are in fact put to non-agricultural use. In this case it is alleged that the plaintiff has made some unauthorised construction. But there is nothing to indicate that it is only for non-agricultural use. Hence the above observations of this court in **Jamunabai's case** will not help the petitioner.
7. In view of this no interference is called for with the impugned order. Civil Revision Application is, therefore, dismissed.

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